



2003 ASSEMBLY BILL 691

December 5, 2003 - Introduced by Representatives BLACK, RICHARDS, MILLER, TAYLOR, TURNER, STASKUNAS, SERATTI, KRUG, POCAN, MOLEPSKE, BERCEAU, J. LEHMAN, LOTHIAN, SHILLING, GUNDERSON, POPE-ROBERTS and VAN AKKEREN, cosponsored by Senator ROBSON. Referred to Committee on State Affairs.

1 **AN ACT** *to create* 100.53 and 100.54 of the statutes; **relating to:** prohibiting the
2 transmission of certain electronic mail messages, prohibiting the collection of
3 certain electronic mail addresses, prohibiting the registration for electronic
4 mail accounts for certain purposes, and prohibiting the violation of policies of
5 electronic mail service providers.

Analysis by the Legislative Reference Bureau

This bill regulates the conduct of persons who transmit certain electronic mail advertisements. This bill prohibits persons from transmitting unsolicited electronic mail advertisements either from this state or to an electronic mail address in this state. The bill defines an unsolicited electronic mail advertisement as an electronic mail advertisement that is sent by an advertiser to a recipient who has not provided express consent to receive advertisements from the advertiser and that is initiated to advertise the lease or sale of property, goods, or services or to promote the extension of credit. The prohibition does not apply to a telecommunications utility or electronic mail service provider that transmits an electronic mail advertisement only as an intermediary. It also does not apply to a person who transmits an unsolicited electronic mail advertisement to a recipient with whom the person has a preexisting or current business relationship unless the recipient has notified the sender that the recipient does not want to receive any further unsolicited electronic mail advertisements from the sender.

This bill also prohibits certain conduct that relates to the method by which a person collects or uses electronic mail addresses. The bill prohibits persons from

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collecting electronic mail addresses posted on the Internet if the person collects those addresses for the purpose of transmitting, causing to be transmitted, or assisting in the transmission of (transmitting), unsolicited electronic mail advertisements. It also prohibits a person from using an electronic mail address obtained by using automated means to transmit unsolicited electronic mail advertisements. Additionally, the bill prohibits a person from using scripts or other automated means to register for multiple electronic mail accounts from which to transmit unsolicited electronic mail advertisements.

This bill also prohibits a person from sending an electronic mail advertisement that contains or is accompanied by a third party's domain name without that third party's permission and prohibits the use of certain false or forged header information or misleading subject line information.

Under this bill, a person who sends unsolicited electronic mail advertisements to a recipient with whom the person has a preexisting or current business relationship must include in the electronic mail advertisement a toll-free telephone number or return electronic mail address that the recipient may use to notify the sender that the recipient does not want to receive unsolicited electronic mail advertisements from the sender.

The bill authorizes the Department of Justice, electronic mail service providers, and recipients of unsolicited electronic mail advertisements transmitted in violation of the provisions discussed above to bring an action against the violator to recover damages.

This bill also regulates the conduct of certain registered users of electronic mail service providers. Under the bill, if an electronic mail service provider has a policy that prohibits or restricts the use of its service or equipment for the initiation of certain kinds of electronic mail advertisements, then that service provider's registered users may not use the provider's equipment located in this state in violation of that policy. If a registered user violates the provider's policies, the electronic mail service provider may bring a civil action against that registered user to recover damages.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.53 of the statutes is created to read:

2 **100.53 Regulation of unsolicited electronic mail advertisers. (1)**

3 DEFINITIONS. In this section:

4 (a) "Advertiser" means a person that advertises through the use of electronic
5 mail advertisements.

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1 (b) “Domain name” means any alphanumeric designation that is registered
2 with or assigned by any domain name registrar as part of an electronic address on
3 the Internet.

4 (c) “Electronic mail” means an electronic message that is sent to an electronic
5 mail address and that is transmitted between 2 or more telecommunications devices,
6 computers, or electronic devices capable of receiving electronic messages, whether
7 or not the message is converted to hard copy format after receipt or is viewed upon
8 transmission or stored for later retrieval. “Electronic mail” includes electronic
9 messages that are transmitted through a local, regional, or global computer network.

10 (d) “Electronic mail address” means a destination, commonly expressed as a
11 string of characters and consisting of a user name or mailbox and a reference to an
12 Internet domain, to which electronic mail can be sent or delivered.

13 (e) “Electronic mail advertisement” means an electronic mail message initiated
14 for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other
15 disposition of property, goods, or services, or for advertising or promoting the
16 extension of credit.

17 (f) “Electronic mail service provider” means any person, including an Internet
18 service provider, that is an intermediary in sending or receiving electronic mail or
19 that provides to end users of the electronic mail service the ability to send or receive
20 electronic mail.

21 (g) “Incident” means a single transmission or delivery to a single recipient or
22 to multiple recipients of an unsolicited electronic mail advertisement containing
23 substantially similar content.

24 (h) “Preexisting or current business relationship” means that the recipient has
25 made an inquiry and has provided his or her electronic mail address, has made an

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1 application or purchase, or has engaged in a transaction, regarding any property,
2 goods, services, or the extension of credit offered by the advertiser.

3 (i) "Recipient" means the addressee of an unsolicited electronic mail
4 advertisement.

5 (j) "Unsolicited electronic advertisement" means an electronic mail
6 advertisement that is sent by an advertiser to a recipient who has not provided
7 express consent to receive advertisements from the advertiser either in response to
8 a clear and conspicuous request for consent or at the recipient's own initiative.

9 (k) "Wisconsin electronic mail address" means any of the following:

10 1. An electronic mail address furnished by an electronic mail service provider
11 that sends bills for furnishing and maintaining that electronic mail address to a
12 mailing address in this state.

13 2. An electronic mail address ordinarily accessed from a computer located in
14 this state.

15 3. An electronic mail address furnished to a resident of this state.

16 **(2)** TRANSMISSION OF CERTAIN ELECTRONIC MAIL ADVERTISEMENTS PROHIBITED. (a)
17 No person may do any of the following:

18 1. Transmit or cause to be transmitted an unsolicited electronic mail
19 advertisement from this state or to a Wisconsin electronic mail address.

20 2. Assist in the transmission of an unsolicited electronic mail advertisement
21 to a Wisconsin electronic mail address by providing electronic mail addresses where
22 an advertisement may be sent.

23 (b) Paragraph (a) does not apply to any of the following:

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1 1. A telecommunications utility or electronic mail service provider that
2 transmits, causes to be transmitted, or assists in the transmission of an electronic
3 mail advertisement only as an intermediary.

4 2. A person who transmits, causes to be transmitted, or assists in the
5 transmission of, an unsolicited electronic mail advertisement to a recipient with
6 whom the person has a preexisting or current business relationship unless the
7 recipient has notified the sender that the recipient does not want to receive any
8 further unsolicited electronic mail advertisements from the sender.

9 **(3) COLLECTION OF ELECTRONIC MAIL ADDRESSES; ACCOUNT REGISTRATION.** No
10 person may do any of the following:

11 (a) Collect electronic mail addresses posted on the Internet if the person collects
12 the electronic mail addresses for the purpose of transmitting, causing to be
13 transmitted, or assisting in the transmission of an unsolicited electronic mail
14 advertisement from this state or to a Wisconsin electronic mail address.

15 (b) Use an electronic mail address obtained by using automated means to do
16 any of the following:

17 1. Transmit or cause to be transmitted an unsolicited electronic mail
18 advertisement from this state or to a Wisconsin electronic mail address.

19 2. Assist in the transmission of an unsolicited electronic mail advertisement
20 to a Wisconsin electronic mail address by providing electronic mail addresses where
21 an advertisement may be sent.

22 (c) Use scripts or other automated means to register for multiple electronic mail
23 accounts from which to do, or to enable another person to do, any of the following:

24 1. Transmit or cause to be transmitted an unsolicited electronic mail
25 advertisement from this state or to a Wisconsin electronic mail address.

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1 2. Assist in the transmission of an unsolicited electronic mail advertisement
2 to a Wisconsin electronic mail address by providing electronic mail addresses where
3 an advertisement may be sent.

4 **(4) FALSE OR MISLEADING ADDRESSES.** No person may send an electronic mail
5 advertisement from this state or to a Wisconsin electronic mail address if any of the
6 following applies:

7 (a) The electronic mail advertisement contains or is accompanied by a 3rd
8 party's domain name without the permission of the 3rd party.

9 (b) The electronic mail advertisement contains header information that is false
10 or forged or that contains obscured information or misrepresentations. This
11 paragraph does not apply to truthful information used by a 3rd party who has been
12 lawfully authorized by the advertiser to use that information.

13 (c) The electronic mail advertisement has a subject line that a person acting
14 reasonably under the circumstances would know would be likely to mislead a
15 recipient about a material fact regarding the contents or subject matter of the
16 message.

17 **(5) PREEXISTING OR CURRENT RELATIONSHIPS.** (a) Any person who sends an
18 unsolicited electronic mail advertisement to a recipient with whom the person has
19 a preexisting or current business relationship shall include in the unsolicited
20 electronic mail advertisement a toll-free telephone number or a return electronic
21 mail address that the recipient may use to notify the sender that the recipient does
22 not want to receive any unsolicited electronic mail advertisements from the sender.

23 (b) Paragraph (a) does not apply to a person who provides free electronic mail
24 service to electronic mail recipients.

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1 **(6) CIVIL ACTIONS.** (a) Any of the following may bring an action to recover
2 damages against any person who violates this section:

3 1. A recipient of an unsolicited electronic mail advertisement transmitted in
4 violation of this section.

5 2. An electronic mail service provider.

6 3. The department of justice, after consulting with the department of
7 agriculture, trade and consumer protection.

8 (b) A person who brings an action under par. (a) may recover either or both of
9 the following:

10 1. Actual damages.

11 2. Liquidated damages of \$1,000 for each unsolicited electronic mail
12 advertisement transmitted in violation of this section, but not more than \$1,000,000
13 for each incident.

14 (c) Notwithstanding par. (b) 2., if a court finds that the defendant established
15 and implemented, with due care, practices and procedures reasonably designed to
16 effectively prevent the transmission of unsolicited electronic mail advertisements
17 that are in violation of this section, the court shall reduce the amount of liquidated
18 damages recoverable under par. (b) 2. to not more than \$100 for each unsolicited
19 electronic mail advertisement transmitted, or not more than \$100,000 per incident.

20 (d) An electronic mail service provider who has brought an action against a
21 person for a violation of s. 100.54 may not bring an action against that person for a
22 violation of this section for the same unsolicited electronic mail advertisement.

23 (e) In any action brought under this section, the court may award the prevailing
24 plaintiff reasonable attorney's fees and costs, notwithstanding s. 814.04 (1).

25 **SECTION 2.** 100.54 of the statutes is created to read:

ASSEMBLY BILL 691**SECTION 2**

1 **100.54 Policies of electronic mail service providers. (1) DEFINITIONS.** (a)

2 “Electronic mail advertisement” means any electronic mail message, the principal
3 purpose of which is to promote, directly or indirectly, the sale or other distribution
4 of goods or services to the recipient.

5 (b) “Electronic mail service provider” means any business or organization
6 qualified to do business in this state that provides registered users the ability to send
7 or receive electronic mail through equipment located in this state and that is an
8 intermediary in sending or receiving electronic mail.

9 (c) “Initiation” of an unsolicited electronic mail advertisement means the action
10 of the initial sender of the electronic mail advertisement. It does not include the
11 action of any intervening electronic mail service provider that may handle or
12 retransmit the electronic message.

13 (d) “Registered user” means any person that maintains an electronic mail
14 address with an electronic mail service provider.

15 (e) “Unsolicited electronic mail advertisement” means any electronic mail
16 advertisement that meets both of the following requirements:

17 1. It is addressed to a recipient with whom the initiator does not have an
18 existing business or personal relationship.

19 2. It is not sent at the request of or with the express consent of the recipient.

20 **(2) PROHIBITION.** If an electronic mail service provider has a policy prohibiting
21 or restricting the use of its service or equipment for the initiation of unsolicited
22 electronic mail advertisements, then no registered user of that electronic mail
23 service provider may use or cause to be used any of that electronic mail service
24 provider’s equipment located in this state in violation of that policy.

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1 **(3) CONSTRUCTION.** Nothing in this section shall be construed to limit or restrict
2 any of the following:

3 (a) The rights of an electronic mail service provider under 47 USC 230 (c) (1).

4 (b) Any decision by an electronic mail service provider to permit or to restrict
5 access to or use of its system.

6 (c) Any decision by an electronic mail service provider to permit or to restrict
7 the exercise of its editorial function.

8 **(4) CIVIL ACTIONS.** (a) An electronic mail service provider may bring a civil
9 action against any registered user who violates the electronic mail service provider's
10 policy in the manner specified under sub. (2).

11 (b) An electronic mail service provider who brings a civil action under par. (a)
12 may recover an amount equal to the greater of either of the following:

13 1. An amount equal to the actual monetary loss suffered by that electronic mail
14 service provider.

15 2. Liquidated damages in the amount of \$50 for each electronic mail message
16 initiated or delivered in violation of sub. (2), but not more than \$25,000.

17 (c) The court may award reasonable attorney's fees to the prevailing party
18 notwithstanding s. 814.04 (1).

19 (d) In any action brought under sub. (2), the electronic mail service provider
20 shall establish as an element of its cause of action that prior to the alleged violation,
21 the defendant had actual notice of both of the following:

22 1. The electronic mail service provider's policy on unsolicited electronic mail
23 advertising.

24 2. The fact that the defendant's unsolicited electronic mail advertisements
25 would use the electronic mail service provider's equipment located in this state.

